the matter is well worth the consideration of our law makers.—From *Virginia Law Register,* December, 1922.

Public Defender.—The papers, both legal and otherwise, have been discussing at some length during the past few months the question of a Public Defender. The more one thinks of it the more necessary to the proper administration of justice we believe such an officer to be. It is true that no man is tried in our courts who is not able to employ counsel, that counsel is not assigned to him by the court; but too often the counsel thus assigned are the youngest members at the bar, the court thus giving an opportunity to our young knights to flash their maiden swords. We think it proper to say that in nearly all instance these young lawyers do their duty fully and with even more zeal and success than the older and well paid attorneys, but at the same time an experience of some years has convinced us that a Public Defender would expedite justice and the business of the courts with more zeal and celerity than at present. Whilst it is true that the Attorney for the Commonwealth ought to a certain extent to consider himself as representing the prisoner, too often in the zeal of combat even the best Attorney for the Commonwealth will forget this duty and urge a conviction with a great deal of force when probably had he looked at it impartially he would have advised the jury of the exact nature of the case. The difficulty with most Attorneys for the Commonwealth is that they do not even hear the evidence for the Commonwealth in full until the trial. With that strange distrust of its public officers which we think is one of the peculiar characteristics of the State of Virginia, the Commonwealth's Attorney is not allowed to appear before the grand jury unless summoned as a witness. We have seen it gravely stated that the reason for this is that the Attorney for the Commonwealth would try to get as many indictments found by the grand jury as possible, whereas we believe that the conscientious Attorney for the Commonwealth wants to have as few indictments found as possible, and if he were in the jury room to aid and counsel the grand jury and advise them as to the nature of evidence and get a full view of the case, a great many indictments which are now found and often have to be "nolle prossed" would not be found. In the United States courts the district attorney, or one of his assistants, always appears in the grand jury room. He cross-questions the witnesses, hears the whole case and is therefore in a much better position to say whether an indictment ought to be found. A similar rule prevails in most of the states of the Union and has been found to work admirably, but this not being the case in Virginia the position of the Public Defender becomes one of great importance. Occupying a position somewhat similar to the Attorney for the Commonwealth, the Public Defender would be able to give ample time to the case and in many instances to advise his client to plead guilty, and when he did defend him would defend him with the highest motives to do justice and not merely to gain a victory. This view may seem to be a little optimistic, but we believe that if the right sort of man were selected for the place it would not be at all so. Of course, it is possible that the Commonwealth might be imposed upon, but this could be

easily remedied by the judge making a strict inquiry into the ability of the accused to pay counsel, and only when it was found that the accused was absolutely unable to pay counsel would the case be assigned to the Public Defender and time given him to examine thoroughly into it. Space will not permit us to work out the scheme that a committee of the legislature might perfect, but we refer a discussion of this question to our bar associations and to our lawmakers, believing that if thoroughly studied and worked out a plan might be adopted to make the appointment of such an officer not only feasible, but to the great benefit of the Commonwealth.—From *Virginia Law Register*, December, 1922.

Outcome of a Celebrated Case.—After three trials for murder, each of which resulted in a failure of the jury to agree upon a verdict, the district attorney of Los Angeles has brought about the discharge of Arthur C. Burch, charged with killing J. Belton Kennedy. Upon his release by the court on the district attorney's motion, Burch, at the request of his own attorney, was taken into custody for examination as to his sanity. Of course, it is impossible to say in advance of the investigation whether Burch will be found insane. It is sufficient to know that Burch's father regards his son as insane and that Burch's attorney, after fighting for a year to prevent his conviction for willful murder, has insisted upon an official inquiry into his condition.

This question naturally arises: Why, after many months of legal effort and after three formal and expensive jury trials, is Burch's mental state still a matter of doubt? Something is grievously wrong with a system of criminal prosecution which persistently works upon the theory that an accused man is sane without first establishing beyond doubt whether he is sane or insane. The question of mental soundness in a given case is not so obscure in these days of carefully established scientific tests that doubt should linger and juries, because of that doubt, should disagree time after time. Burch's attorney is quoted as saying: "I am convinced that Burch is insane and have been convinced of it ever since I talked to him first more than a year ago." And the attorney added: "I consider it dangerous to let him be at large."

If it is dangerous for Burch to be at large that danger might have been discovered before the death of the man whom he was accused of slaying from ambush. Whether Burch is insane or not, it is certain that many dangerous mental defectives who are potential criminals now enjoy their liberty.

The investigation of Burch's condition may or may not help to bring home to lawmakers, prosecutors and judges the duty resting upon them of dealing intelligently and effectively with the long-neglected problem of insanity left free to manifest itself in criminal deeds. Innocent persons are entitled to protection from irresponsible types of human beings who act on irrational impulses, being devoid of those natural emotions which restrain sane minds from senseless crimes. This subject has been left so long in the fog that followers of precedent are loath to give it the serious consideration its importance insistently demands.